Supreme Court, U. S.
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APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-728

HAROLD FRANKS and JOHNNIE LEE,

Petitioners,

v.

BOWMAN TRANSPORTATION COMPANY, INC., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 10, 1974
CERTIORARI GRANTED MARCH 24, 1975

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Relevant Docket Entries

May 5, 1971	Plaintiff's complaint filed in United States District Court for the Northern District of Georgia, Atlanta Division.
May 20, 1971	Answer of defendant Bowman Transportation Company filed.
May 25, 1971	Answer of defendants, International Union of District 50 and its Local No. 13600 filed.
July 21, 1971	Intervenor's motion to intervene and proposed complaint filed.
July 21, 1971	Order of District Court allowing intervention filed.
August 10, 1971	Answer of defendant Bowman to Intervenor's complaint filed.
August 25, 1971	Answer of defendant Unions to Intervenor's complaint filed.
March 28-30, 1972	Trial proceedings in District Court.
April 26, 1972	Plaintiff and Intervenor's Proposed Advisory Judgment, Order and Decree filed.
June 29, 1972	Opinion, Order and Decree of District Court filed.
July 14, 1972	Judgment of District Court filed.

Relevant Docket Entries

July 26, 1972	Notice of Appeal by Plaintiff and Intervenor filed.
August 3, 1972	Order amending judgment filed.
October 18, 1972	Record on Appeal filed in United States Court of Appeals for the Fifth Circuit.
June 3, 1974	Opinion and Judgment of Court of Appeals filed.
July 1, 1974	Petition for Rehearing filed on behalf of Plaintiff and Intervenor.
September 12, 1974	Order denying Petition for Rehearing filed.
December 10, 1974	Petition for a Writ of Certiorari filed in United States Supreme Court.
December 11, 1974	Case docketed in United States Supreme Court.
March 24, 1975	Order granting Petition for a Writ of Certiorari filed.

Note Regarding Opinions Below

Pursuant to the "Memorandum re Printing" of the Clerk, the Opinions, Orders, and Judgments of the Courts Below, having been printed in an Appendix to the Petition for a Writ of Certiorari, will not be reprinted in this Appendix. Those opinions and their location in the Appendix to the Petition are as follows:

Opinion	*Pet. App. Pages*
Decision of the United States Court of Appeals for the Fifth Circuit, entered June 3, 1974	A1–A41
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Order and Decree of the United States District Court for the Northern District of Georgia, filed June 29, 1972	A65–A68
Judgment of the United States District Court for the Northern District of Georgia, filed July 14, 1972	A69–A70

Complaint

[5] IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CIVIL ACTION NO. 15086

HAROLD FRANKS,

Plaintiff,

v.

BOWMAN TRANSPORTATION COMPANY; INTERNATIONAL UNION OF DISTRICT 50, LOCAL NO. 13600, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA; and, INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA,

Defendants.

I.

Jurisdiction of this Court is invoked pursuant to 28 United States Code, §1343. This is a suit in equity authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 United States Code, §2000e, *et seq.* and 42 U.S.C., §1983. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by (a) Title VII of the Civil Rights Act of 1964, 42 United States Code, §2000e, providing for injunctive and other relief against racial discrimination in employment and (b) 42 United States Code, §1981, providing for equal rights of citizens and all persons within the jurisdiction of the United States.

Complaint

This is also a suit for a declaratory judgment pursuant to the provisions of §2201, *et seq.*, 28 United States Code, declaring and adjudging that the unlawful employment practices alleged here [6] in deprive and withhold from plaintiff and the class which plaintiff represents, rights secured by §§1981 and 2000e, *et seq.*, 42 United States Code. There exists between the parties hereto an actual controversy of a justiciable nature.

II.

Plaintiff brings this action on his behalf and on behalf of all others similarly situated pursuant to Rule 23(a), and (b), (1) (2), Federal Rules of Civil Procedure. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class with respect to the terms, conditions, or privileges of employment, or employment opportunities, or which otherwise adversely affect their status as employees on the basis of their race and color. The claims of the named plaintiff are typical of the claims of the class. The named plaintiff will fairly and adequately protect the interests of the class. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; and the defendants herein have acted or refused to act on grounds generally applicable to the class, thereby making appropriate the final injunctive and declaratory relief sought herein with respect to the class as a whole.

III.

This is a proceeding for a preliminary and permanent injunction, as well as a declaratory judgment, restraining and enjoining defendants from maintaining any policy, practice, custom, and usage of withholding, denying, attempting to deprive and otherwise [7] interfere with the rights of plaintiff and his class to equal opportunities on the grounds of race or color.

IV.

Plaintiff, HAROLD FRANKS, is a Black citizen of the United States and the State of Georgia, residing in Morrow, Georgia, within the jurisdiction of this Court.

V.

(A.) Defendant BOWMAN TRANSPORTATION COMPANY (hereinafter, sometimes BOWMAN) is a common carrier of general commodities with intrastate authority in Georgia and interstate authority in other states. Defendant has a terminal in Atlanta, Georgia, within the jurisdiction of this Court. Defendant employs more than 25 persons and is covered by Title VII of the Civil Rights Act of 1964;

(B.) Defendant LOCAL No. 13600, International Union of District 50, Allied and Technical Workers of the United States and Canada (hereinafter sometimes LOCAL 13600) represents employees at defendant's Atlanta terminal. It represents more than 25 persons and is covered by Title VII of the Civil Rights Act of 1964;

(C.) Defendant INTERNATIONAL UNION OF ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (hereinafter, sometimes INTERNATIONAL) is the International Union of which LOCAL No. 13600 is a part. Its headquarters are located in Washington, D.C., and it is covered by Title VII of the Civil Rights Act of 1964.

VI.

Plaintiff, while employed with defendant BOWMAN, on March 25, 1968, filed charges with the federal Equal Employment Opportunities Commission alleging that BOWMAN was maintaining a system of distinct job classifications for Blacks, that BOWMAN discriminated against him by failing to promote him, and that BOWMAN [8] maintained a system of segregated washrooms. The charges were served by the EEOC on BOWMAN on April 23, 1968. Thereafter, on May 10, 1968, plaintiff was terminated by defendant for allegedly breaking a company rule, albeit a rule the violation of which had caused the Company no injury and was not cause to terminate persons in the past.

VII.

Defendant BOWMAN maintains three divisions with separate seniority lists at its Atlanta terminal. At the time of plaintiff's employment, no Blacks were employed in the Over the Road division or in the Dock Work division. Blacks were employed only in the Maintenance division. One cannot transfer from one division to another without loss of all seniority. Only three percent of BOWMAN's Atlanta work force was Black during plaintiff's employment.

VIII.

None of BOWMAN's Black employees were supervisors or employed in positions of responsibility during plaintiff's employment with BOWMAN. Prior to his initial EEOC

complaint against Bowman, plaintiff unsuccessfully sought upgrading from tirechanger to diesel mechanic, but was denied the same. Denial of promotion to plaintiff was part of a pattern and practice of restricting the promotional or advancement opportunities of Blacks working for Bowman.

IX.

Washrooms at Bowman's Atlanta terminal were assigned according to divisions, with the result, during plaintiff's employment, that the washrooms in the all-white divisions were also all-white.

[9] X.

Following plaintiff's termination on May 10, 1968, he sought the assistance of Local 13600 and the International but received none to assist him in grieving against the termination. Failure of the union to properly represent plaintiff because of his race is in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981.

XI.

The act of Bowman in discharging plaintiff in the manner described in paragraph VI, *supra*, was an illegal discharge based upon plaintiff's race and because he had filed charges with and assisted in investigation of those charges with the EEOC, all in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981.

XII.

The acts of Bowman, Local 13600, and the International in maintaining a seniority system whereby (a) Blacks were

confined to one division and (b) persons cannot transfer from division to division without loss of seniority is illegal under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981.

XIII.

The acts of Bowman, Local 13600, and the International in maintaining a system whereby plaintiff and other Blacks were confined to low-paying, non-responsible jobs without opportunity for promotion or adancement is illegal under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981.

XIV.

The acts of Bowman, Local 13600 and the International described in paragraphs VII, VIII, IX, XII and XIII, *supra*, affect the [10] class of other Black employees, present, past, and future of Bowman, and who are, were or may be represented by Local 13600 or the International, in that the acts described in those paragraphs are discrimination against the class of persons represented by plaintiff because of their race or color, in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1981.

XV.

As a result of his illegal discharge, plaintiff was unemployed; received a hospital bill for his wife's pregnancy that would have been covered by his insurance with defendant Bowman, but was not as a result of his termination; lost two weeks paid vacation; and was employed for a number of years at a lower wage than he earned while employed by Bowman.

XVI.

Neither the State of Georgia, the County of Fulton, nor the City of Atlanta has a law prohibiting the unlawful practices alleged herein.

XVII.

On or about March 25, 1968, plaintiff filed a complaint with the EEOC complaining of his inability to be promoted and of segregated divisions and washrooms. On May 13, 1968, plaintiff filed a complaint with the EEOC complaining of his discharge because he previously filed a discrimination complaint with the EEOC. On June 1, 1968, plaintiff filed a complaint with the EEOC charging defendants LOCAL 13600 and INTERNATIONAL with failure to fairly represent him after his discharge. On March 2 and March 5, 1971, plaintiff amended his charges against BOWMAN and against LOCAL 13600 and the INTERNATIONAL. All of said charges and amended charges were made under oath and within the time allowed by law. The charges and amended charges were duly served by the EEOC [11] upon defendants. In a letter dated April 14, 1971, the EEOC, pursuant to plaintiff's request, informed him that he might, within thirty days, institute a civil action under Title VII in the appropriate court; 42 U.S.C. §2000e-5(e).

XVIII.

Plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged, and this suit for a preliminary injunction is his only means of securing adequate relief. Plaintiff and the class he represents are now suffering and will continue to suffer irreparable injury from

defendant's policies, practices, customs, and usages, as set forth herein.

WHEREFORE, plaintiff respectfully prays that this Court advance this cause on the docket, order a speedy hearing at the earliest practicable date, and cause this case to be in every way expedited, and upon such hearing, to:

(1) Grant plaintiff and the class he represents a preliminary and permanent injunction, enjoining and restraining defendant BOWMAN, LOCAL 13600 and INTERNATIONAL, their agents, successors, employees, attorneys, and those acting in concert with them and at their direction, from continuing or maintaining any policy, practice, custom and usage of denying, abridging, withholding, conditioning, limiting, restricting, or otherwise interfering with the right of plaintiff and his class to equal employment opportunities on the basis of race or color;

(2) Grant plaintiff and the class he represents a preliminary and permanent injunction enjoining and restraining defendants BOWMAN, LOCAL 13600 and INTERNATIONAL, their agents, employees, attorneys, and those acting in concert with them and at their direction, from continuing or maintaining any policy, practice, [12] custom and usage of discriminating against the plaintiff and the class he represents by depriving and withholding from them opportunities for employment, for equal working conditions, for equal pay, for equal promotional opportunities, and for the right to seek redress of grievances under Title VII on the basis of their race or color;

(3) Grant plaintiff, HAROLD FRANKS, an award of money equal to the difference between what he would have earned, but for the acts of discrimination complained of herein,

and what he actually earned as a consequence of such discrimination;

(4) Grant plaintiff, HAROLD FRANKS, restoration of the employment with defendant from which he was wrongfully terminated, together with restoration of any seniority and other benefits to him as though he had been continuously employed by defendant;

(5) Grant plaintiff and the class he represents a declaratory judgment declaring and adjudging that the discriminatory acts of defendants BOWMAN, LOCAL 13600, and INTERNATIONAL alleged herein constitute violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C., §2000e *et seq.*, and 42 U.S.C. §1981;

(6) Allow plaintiff his costs herein, including reasonable attorney's fees and such other additional relief as may appear to be equitable and just.

/s/ PETER E. RINDSKOPF
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[13]

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Attorneys for Plaintiff

[Return on Service Omitted in Printing]

Motion to Intervene

[48] UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

[Title Omitted in Printing]

JOHNNIE LEE moves for leave to intervene as a plaintiff in this action, in order to assert the claim set forth in his intervention complaint, of which a copy is hereto attached on the ground that common questions of law and fact of racial discrimination by the defendant are involved.

/s/ PETER E. RINDSKOPF
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Attorneys for Intervenor

Intervener's Complaint

[50] UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

[Title Omitted in Printing]

I.

Intervener adopts and incorporates by reference paragraphs I, II, III, V, VII, VIII, IX, XII, XIII, XIV, XVI, and XVIII of plaintiff's complaint in the original action above.

II.

Intervener, JOHNNIE LEE, is a Black citizen of the United States and the State of Florida, residing in the City of Pensacola, Florida.

III.

Intervener applied for a job as an over-the-road driver with defendant in January, 1970. On February 13, 1970, intervener was told by defendant company's Atlanta office that his application was rejected because, "Application was not accepted at this time." This unsuccessful application was preceded by an application in November, 1969, which intervener sent in without attaching thereto a photograph of himself. That first application was rejected [51] on the grounds that "you have filled out the wrong application for a road driver." Defendant company does not require photographs on its local driver applications but does require them for long distance or over-the-road jobs.

Intervener's Complaint

IV.

Intervener had over ten years of experience as a driver. Within 30 days of the rejection of intervener's application, defendant hired nine (9) white over-the-road drivers. From January 2 through June 8, 1970, defendant company hired five white drivers with less than one year's driving experience.

V.

The policy and practice of defendant company in requiring photographs of applicants for long distance driving jobs (although not for local driving jobs) is part of a policy, custom, practice and usage maintained by defendant company and defendant unions in restricting the opportunities for intervener and other members of his race and class to become over-the-road drivers and as such is forbidden by Title VII of the Civil Rights Act of 1964 and 42 U.S.C., Sec. 1981.

VI.

Rejection of intervener's application, with photograph attached, was part of the policy, custom, practice, and usage of defendants in restricting the opportunities of intervener and other members of his race and class to become over-the-road drivers and as such is forbidden by Title VII of the Civil Rights Act of 1964, and 42 U.S.C., Sec. 1981.

VII.

On February 26, 1970, within the time required by law from the company's illegal rejection of his application,

intervener filed a charge with the federal EEOC. The charge was served on [52] defendant company on June 16, 1970. Thereafter, in August, 1970, defendant company (in a letter from counsel in this case) offered plaintiff a job as an over-the-road driver in Alabama, which offer he accepted in September 1970.

VIII.

On March 18, 1971, intervener was accused of violating a company rule by tampering with the engine of his truck and discharged. Intervener did not tamper with his truck engine nor permit anyone to do so in his behalf. Enforcement of the company rule against intervener in these circumstances was part of the custom, practice, policy and usage of defendants in restricting the number of Blacks as over-the-road drivers, in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C., Sec. 1981.

IX.

Defendant unions failed to secure intervener's restoration to his job after his discharge, in keeping with their policy, custom and usage of restricting the over-the-road jobs to whites, in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C., Sec. 1981.

X.

Subsequent to his discharge, intervener filed a timely charge with the EEOC, which charges were served upon defendants. On June 22 and June 30, 1971, intervener received letters from the EEOC, pursuant to his request, authorizing him to institute within thirty days a civil ac-

tion in the appropriate federal district court upon the charges previously filed with the EEOC.

WHEREFORE, in addition to the relief prayed for in paragraphs 1, 2, 5, and 6 of the complaint in the principal action herein, intervener prays that this Court:

[53] 1. Grant intervener judgment against defendants for the amount of back wages he lost because of their discriminatory actions (a) in refusing to hire him from November, 1969, until September, 1970, and (b) in discharging him in March, 1971, until the present;

2. Enjoin and restrain defendants, their employees, agents, servants, attorneys, and all those in active concert and participation with them from (a) continuing to discriminate in the hiring and firing of Blacks in the positions with defendant company; (b) continuing the practice of requiring submission of a photograph to accompany job applications for employment with defendant company; and (c) continuing the practice of defendant company of failing to properly retain and of defendant unions to properly represent Black employees of defendant company;

3. Declare that the practices of defendants enumerated in the complaint are illegal racial discrimination in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C., Section 1981.

Intervener's Complaint

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Attorneys for Intervenor

[Certificate of Service Omitted in Printing]

Order

[54] United States District Court
For the Northern District of Georgia

[Title Omitted in Printing]

The above motion to intervene and intervener's complaint read and considered, It Is Hereby Ordered That they are allowed filed and allowed, subject to objection.

Dated this 20th day of July, 1971.

/s/ Sidney O. Smith
United States District Judge

Plaintiff and Intervenor's Proposed Advisory Judgment, Order and Decree

[1113] UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

[Title Omitted in Printing]

Upon the Findings of Fact and Conclusions of Law entered in this action in compliance with Rule 52, Fed. R. Civ. P., and on all the premises, the Court enters the following order and decree:

• • • • •

[1117] • • •

6. All seniority, promotion, transfer and layoff provisions of the present collective bargaining agreement between defendants are hereby modified, and all future agreements shall be conformed, to incorporate the provisions of this decree.

C. *Hiring and Recruitment*

7. Members of Affected Classes 3 and 4 who were denied employment shall have rights to re-apply for employment in the same jobs for which they originally applied, as follows:

a) Each such identifiable person shall be listed by name, last known address, date and job applied for, by defendant Bowman. This list shall be filed in Court. In the case of rejected road driver applicants, the list shall include all those apparently qualified individuals whose applications were put in evidence at trial herein, or whose applications were summarized by documentary material in evidence at the trial. An individual shall be deemed "apparently qualified" if his application shows a claim of one year or more of tractor-trailer driving experience. Such persons may be eliminated from consideration only if the application form or subsequent inquiry shows affirmative reason to believe the person unqualified for the road driving job.

b) Bowman shall notify each person on the list that this Court has found its hiring practices with respect to the job, date, and place of that individual's application to have been racially [1118] discriminatory, and has ordered that such practices cease forthwith.

c) Bowman shall specifically invite each person on the list to re-apply within thirty (30) days for the job originally sought, and shall offer to retain applications on file for ninety (90) days pending the availability of job vacancies. Applicants shall be invited to renew their applicaions for a further ninety (90) days by a simple notice of renewal. In the case of road drivers, however, applications shall be retained on file for one year.

d) Bowman's notice to rejected applicants for all jobs shall contain a simple form which may be filled out and returned to indicate interest in re-applying. The form shall be filed in court prior to its distribution to class members.

e) Bowman shall list, for each job category or department, all persons in the Affected Classes 3 and 4 who respond within thirty (30) days indicating an interest in hiring. The list shall be arranged according to the dates of original application for the job, and shall be filed in court.

Plaintiff and Intervenor's Proposed Advisory Judgment, Order and Decree

f) If, after thirty (30) days from the mailing of notice to re-apply, any member of Affected Classes 3 or 4 has not re-applied for hiring, he shall be deemed to have waived his right to priority consideration for the job which he was previously denied.

g) If no member of Affected Classes 3 and 4 who is [1119] qualified and competent for the position applied for has re-applied for a job vacancy in a particular job, defendant Bowman may fill this vacancy by hiring a new employee, subject to the hiring provisions *infra,* or by transferring a current employee, subject to the provisions of this decree. If one or more qualified and competent persons remains on the list for the particular job, the listed person with the earliest original application date shall be offered a reasonable opportunity to accept the job. If that person declines the opportunity, his priority re-application rights shall cease.

h) Persons in Affected Classes 3 and 4 rehired pursuant to these provisions shall, upon rehiring, assume applicable seniority from the date on which their earlier application was rejected.

i) Nothing in this paragraph in any way affects the Company's right to insist that hirees possess adequate qualifications and competency to perform their jobs, as measured by objective, legitimate, and non-discriminatory standards.

• • • • •

[Certificate of Service Omitted in Printing]

Transcript of Proceedings

[1202] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CIVIL ACTION NUMBER 15086

HAROLD FRANKS,

Plaintiff,

BOWMAN TRANSPORTATION COMPANY, ET AL.,

Defendants,

JOHNNIE LEE,

Plaintiff-Intervenor.

Transcript of proceedings had before the Honorable SIDNEY O. SMITH, JR., Judge, United States District Court, on March 28, 29, and 30, 1972, in Atlanta, Georgia.

APPEARANCES OF COUNSEL:

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Plaintiff-Intervenor:

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Testimony of Dwight Rice

For Defendant Bowman:

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For Defendant Union:

Robert B. Hocutt
Equitable Building
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• • • • •

[1212]

DWIGHT RICE called as a witness by the plaintiffs after having first been duly sworn testified as follows:

Cross Examination by Mr. Baller:

Q. Please state your name. A. Dwight Rice.

Q. And your address? [1213] A. 2333 Perrian Drive, Decatur, Georgia.

Q. What is your race, Mr. Rice? A. Caucasian.

Q. By whom are you employed? A. Bowman Transportation, Inc.

Q. And what is your position with Bowman? A. Director of Safety and Personnel.

Q. Are you representing Bowman in this case? A. Yes, sir.

• • • • •

Q. When were you first employed by Bowman, Mr. Rice? A. April 1959.

Q. And what was your job at that time? A. Director of Safety and Personnel.

Q. Is that the same job you now hold? A. Yes, sir.

Testimony of Dwight Rice

Q. And have you held that job from 1959 to present? A. Yes.

• • • • •

[1214] • • •

Q. What were your duties in 1959 when you first assumed your present job? A. Basically the same as they are now.

Q. And what are those? A. The responsibility for safety for the entire company, the primary responsibility for the employment of road drivers.

Q. Are you involved in the employment of any other workers besides road drivers? A. Other than certain requirements for city drivers.

Q. Now what are your duties in your job at the present time? A. Supervise the safety supervisors in my department and establish guidelines of hiring and discharge.

Q. Are you personally involved in hiring and discharge decisions, at this time? A. I'm not personally involved in hiring, I am still involved in discharge.

[1215] Q. When did you cease to be personally involved in hiring? A. I would estimate three to four years ago.

Q. That would be about 1968, approximately. A. Approximately.

• • • • •

[1229] Q. Now, with regard to the hiring of over-the-road [1230] drivers, Mr. Rice, could you tell me what your personal duties and responsibilities have been since the time of your employment? A. Well, number one, to make sure they complied with the Federal requirement of the ICC and most recently Department of Transportation. Second, trying to establish guide lines to hire people that would have a successful driving record on the road.

Q. Have you been involved in hiring decisions regarding individual applicants? A. Yes.

Q. And during what period were you involved in those kind of decisions? A. From 1959 until approximately 1968.

Q. Where were you located yourself during those times? A. 1959 I was located in Gadsden, Alabama. In 1961, I believe, I moved to Atlanta, Georgia.

Q. Now, during that entire period did you have the final responsibility for hiring, or rejecting Road Driver applicants? A. I didn't personally interview and review every applicant, no.

Q. Did the people who interviewed and reviewed applicants work for you? A. Yes.

[1231] Q. So that you were responsible ultimately for those decisions, is that correct? A. I suppose that's correct.

Q. Did you hire and interview some of the people yourself, during that period of time? A. Yes.

Q. During that period of time, were you hiring Road Drivers for the whole system, or only for certain terminals? A. Well, actually the Road drivers operate through the whole system, other than bid run drivers, who just operate between two points.

Q. Were you then hiring drivers for placement throughout the system?

The Court: Yes.

The Witness: When you say placement, it sounds like you're talking about putting them some place.

By Mr. Baller:

Q. Did anybody else's office hire drivers in the system? A. We have an office in Birmingham, Charlotte, and Richmond that also hired road drivers.

Q. And since when have those various offices been hiring drivers? A. In Richmond I suppose eight or ten years, Birmingham since '69, Charlotte probably a year or so prior to that.

[1232] Q. And prior to the time the hiring offices were set up in those other terminals, then I understand your office in Gadsden and Atlanta was responsible for hiring for those terminals? A. You keep saying for those terminals, and I am saying we are not hiring a road driver here to run out of some other terminal.

Q. How many road drivers did Bowman employ in 1959, when you arrived? A. They had 240.

Q. And how many did they employ in 1968? A. I would estimate between 450 and 500.

Q. Can you make any kind of estimate of how many road drivers were hired during this period, say on an average annual basis? A. From 1959—

Q. To 1968. A. It would just be a guess, possibly 50 in 1959 up to 200 to 300 in '68.

The Court: He maybe asking what sort of turnover you have. Let's assume you have 450 jobs, approximately how many a year do you have to fill?

The Witness: Presently, I believe, about 250.

The Court: About half.

The Witness: About half.

• • • • •

[1235] • • •

Q. Now, at the time that you made decisions on whether or not to hire a driver, did you know the driver's race? A. If I saw him, or his picture was attached to the application.

[1236] Q. Did the application require a picture? A. Yes.

Q. Has that been true throughout the period? A. I'd say since about 1960 or '61.

Q. Would you also know the man's race if some notation has been made on his application? A. Well, I guess.

Q. Did you in fact know the race of every man you hired at the time you hired him? A. I knew the race of the people I hired, yes.

Q. Now, during this period of 1959 to 1968, did Bowman hire any black drivers to your knowledge? A. No black road drivers.

Q. Did they hire any black city drivers? A. Yes.

Q. When was that? A. Well, I'm not really familiar with all the terminal personnel, but I know we had blacks employed in Memphis and Charleston and Charlotte in probably '61 or '62.

Q. Did Bowman hire any black city drivers in Atlanta during this period? A. I really don't know.

Q. Now, getting back to the road drivers, do you know whether Bowman had any kind of policy against hiring black road drivers during this period? [1237] A. We just hadn't hired any.

Q. Did you understand this to be true when you arrived? A. We were not, apparently they were not hiring blacks when I arrived, that's true.

Q. You say apparently, go on. A. Well, I mean I don't know other than the drivers force that they had when I came there, I don't know what they had done prior to that.

Q. What was that driver force when you came? A. Well, the road drivers were all white.

Q. Did you discuss this matter with anyone else in the Bowman management? A. I don't think so at that time.

Q. Did you discuss it with them later? A. I'm sure I have later.

Q. Can you remember who you discussed it with? A. I'm sure I have discussed it with most of the officers at one time or another.

Q. And what was the nature of your discussion with these officers? A. Well due to the fact that we had about a 50% double operation in bunkrooms and shower facilities at many of the terminals, and due to the comments of our white drivers, we didn't think it feasible to hire them.

Q. You didn't think it was feasible to hire black [1238] drivers, you are saying? A. Correct.

Q. Why, exactly, was it not feasible to hire black drivers? A. White drivers had told us they would quit if we put them with them, if we put them in the bunkroom or used the shower facilities.

Q. You say you had about 50% double runs? A. Generally so.

Q. And I presume the other 50% were then single runs? A. Single operations.

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[1239] • • •

Q. Fine, let me pass that and ask you, did you have any black applicants in 1959 to 1968? A. Well, I'm sure we did.

Q. Do you know how many? A. No idea.

Q. Would you say you had as many as one black applicant a month? A. It's possible.

Q. Would you say you had possibly as many as one a week? [1240] A. I doubt if we did early in those years.

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Q. In the later years, would you have had as many as one black applicant per week? A. It's really hard to say.

Q. In any event, you saw a number of applications from blacks? A. I'm sure I saw applications from blacks.

Q. When you saw applications from blacks, did you consider those applications? A. We looked at them and in some cases, checked them out to see how they checked out.

Q. When you checked out the references, if the references checked out, would you then consider them for hiring? A. Well, it goes back to what I said before, we didn't know how we could hire a black and put him with a white driver and not lose the white driver.

Q. I think what you are telling me is that you didn't consider hiring any. A. We didn't hire any in 1968, that's true.

Q. When were blacks first hired in the company? [1241] A. In 1970.

Q. Where were blacks first hired? A. Out of Birmingham.

The Court: Again we are talking about over-the-road only, I assume.

Mr. Baller: Yes, sir, that's correct.

By Mr. Baller:

Q. Do you remember what month in 1970? A. I believe in September.

Q. And who hired them in Birmingham? A. Joe Woods.

Q. Do you know what the circumstances were at that time for hiring black drivers in Birmingham? A. Yes.

Q. What were they? A. Well, Johnny Lee had filed a complaint, and we pulled his application again and made a more extensive effort to try to establish some road driving experience.

The Court: Was this an EEOC complaint?

The Witness: Right.

By Mr. Baller:

Q. That is Johnny Lee, the Plaintiff, of the intervener in this case? A. Correct. At that time, we got to thinking about the mid-west operation that didn't have bunkrooms in it, so we [1242] decided to then hire as many blacks as we could.

Q. Did you talk to EEOC about this matter? A. I'm sure I did.

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Q. Now, were black drivers hired at that time anywhere else besides Birmingham? A. No, like I told you in the deposition, we had two or three in Richmond operating on lease trucks about 1960 or '61.

Q. Could you explain the nature of a Lease Truck [1243] operation? A. Well, one man had ten, or twelve, or fifteen trucks leased to it, and of course, we qualified the drivers that operated the trucks according to Company regulations and two or three of them happened to be black.

Q. And they weren't driving Bowman Trucks, though. A. They were driving trucks leased to Bowman under Bowman's control.

Q. But who were operated by this other individual.

The Court: Were these trip leases?

The Witness: No, they were permanent leases.

Testimony of Dwight Rice
Testimony of Sam Crisco

By Mr. Baller:

Q. And when did that arrangement end? A. I'm not really sure.

Q. Do you know when a black road driver was first hired out of the Atlanta Terminal? A. Last Fall, I believe.

Q. Do you know what month it was then? A. No.

Q. Do you know when a black road driver was first hired out of the Charlotte Terminal? A. After the first of the year.

Q. The first of this year? A. I believe so.

Q. Have blacks hired out of any other terminal? [1244] A. Richmond.

Q. When was that first done? A. I'm not really sure.

Q. Can you explain what the delay was in hiring black drivers out of the Atlanta Terminal? A. Well, the delay revolved around the same consideration that I have stated before.

Q. What changed last Fall in Atlanta that enabled you to hire black drivers? A. After we had hired several in Birmingham and they began to get runs into this part of the system without too much complaints from the other drivers, then we decided to take a chance here.

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[1249] • • •

Sam Crisco called as a witness by the plaintiff after having first been duly sworn testified as follows:

Cross Examination by Mr. Baller:

Q. Please state your full name and address. A. Sam Crisco, 2611 Williamsburg Drive, Decatur, Georgia.

Testimony of Sam Crisco

Q. And for the record will you state your race, Mr. Crisco? A. White.

Q. By whom are you employed? A. Bowman Transportation, Inc.

Q. And for how long have you worked for Bowman? A. Since 1967.

Q. For whom did you work prior to being employed by Bowman? A. Harper Motor Lines.

[1250] Q. And what was your work at Harper? A. Safety Supervisor.

Q. What was your position at Bowman in 1967 when you were hired? A. Assistant Safety and Personnel Director.

Q. And at what location were you working? A. Atlanta.

Q. What is your position with Bowman now? A. Sales Representative.

Q. Have you held any other jobs with Bowman in the time you have been working there? A. No.

Q. When did you change from Assistant Safety Manager to Sales Representative? A. March of '71.

Q. During the period from 1967 to March of '71, when you were Safety Supervisor, what were your duties? A. Hiring of road drivers and general supervision of road drivers.

Q. Did you hire, for what locations in the Bowman System did you hire road drivers? A. I hired for Atlanta.

Q. Did you have any responsibility for hiring road drivers at other terminals? A. Yes.

[1251] Q. What was your responsibility in that regard? A. I had hired some for the Memphis Terminal, and then I would review applications submitted for employment from other terminals.

Q. By whom were these applications for employment at other terminals submitted? A. Who submitted them?

Q. Right. A. We had Safety Supervisor in Richmond, Virginia, Safety Supervisor in Charlotte, North Carolina, Safety Supervisor in Birmingham, Alabama.

Q. Did those people take applications at those terminals? A. Yes.

Q. And did the men who applied at those other terminals live in that area? A. I suppose.

Q. Did you have a chance to review their applications? A. At times.

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[1371] • • •

A. There is a J. H. Jarnigan hired, date of employment January 30, 1970.

Q. That is about four days after Mr. Lee's application arrived in your office, wasn't it? A. Yes, the first application received, yes.

[1372] The Court: During this time you weren't hiring any blacks out of the Atlanta Terminal, were you?

The Witness: No, sir.

The Court: Wasn't everybody saying they were going to put it off as long as they could?

The Witness: Saying about hiring black drivers?

The Court: Uh, huh.

The Witness: We didn't have the facilities for hiring.

The Court: You mean in bunk beds and showers?

The Witness: Yes, sir.

The Court: All your drivers were telling you every day not to hire anybody and you decided to tough it out as long as you could, isn't that the fact?

The Witness: Yes, sir, we were waiting until we were confronted with it. We had had some to say they would leave themselves.

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[1373] *By Mr. Baller:*

Q. Now, if you received an application from a road driver applicant who had no driving experience, could you consider that application? A. If I received it would I consider it for a road drivers application?

Q. Right. [1374] A. No, sir.

Q. Could you hire a man as a trainee if he didn't have any experience? A. If we had a placement for him, we could.

Q. Did you in fact have a training program? A. Yes, sir.

Q. Could you please describe that program? A. Our training program was designed to hire and train drivers for Bowman Transportation. They had to be 25 years of age, have a good work record, motor vehicle record, he had to be neat, conscientious.

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Q. You could hire a man as a trainee even if he didn't have truck driving experience? A. Yes, we had a training program.

Q. During what period did you have this program? A. I don't recall the exact dates, it was probably '68 [1375] to maybe up to '71.

Testimony of Sam Crisco

Q. Do you have any idea approximately how many men you hired into the training program? A. One hundred fifty, I suppose, I don't recall, maybe not that many, I maybe off.

Q. But you guess it might be 150? A. It maybe 75, I don't recall, I hired a lot of trainees.

Q. All right. Now, how did this trainee program work, first in terms of application to the program? A. The application checked out, then if we had a driver who would take the man and train him then later we had to alter our training program, so a driver-trainer had to agree to take him before we could check the application out in most cases.

Q. Who would this driver-trainer be? A. A regular employed road driver with a good record.

Q. Of Bowman that is. A. Right, that had been there for at least six months or longer.

Q. I see. Now, would these regularly employed drivers refer other people for that program? A. Some, some did.

Q. If a man came in and he didn't have a sponsor who was already a driver, would you hire him as a trainee? A. In the beginning we did, if he checked out.

Q. And after the beginning, what happened? [1376] A. Well, the road drivers did not want to take a man and train him and if we asked him to and it didn't work out with the driver-trainee, then we would soon lose the trainee, so at a later time we let the driver-trainee decide whether or not he wanted to train him.

Q. And if he did you would hire him? A. If he checked out, yes.

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[1379] • • •

Q. How many black applicants did you have during the time you were hiring road drivers? A. From 1967?

Testimony of Sam Crisco

Q. Right. A. Not too many.

Q. Did you have as many as one a week? A. It's possible it would be one a week, it could have been less.

Q. And you never hired a black applicant, is that right? A. No, sir.

Q. Tell us why you didn't hire any.

The Court: He has already told you I think.

The Witness: We didn't have the provisions for hiring of the black drivers under our present program, training [1380] program. All applicants hired had to ride with a driver for at least 90 days to six months.

The Court: Was there ever a black driver hired out there until Mr. Pate said somebody better get busy and hire somebody?

The Witness: I don't think we had hired a road driver until—

By Mr. Baller:

Q. Was that the reason you didn't hire any black road drivers? A. No, sir, I don't recall receiving one that was qualified.

Q. I see. Is your reason that you didn't have any applications from qualified black drivers? A. I don't follow you.

Q. Did you have any qualified black applicants? A. No, sir, I don't recall one.

Q. All right. How many applications did you have from white drivers per month? A. Probably 100, could be more or less.

Testimony of Sam Crisco
Further Testimony of Dwight Rice

Q. And how many of those did you hire? A. Maybe 15 to 20 percent.

Q. All right. Now, were all of those people qualified? A. The 15 or 20 percent were, yes, sir, except for the trainees that we hired during that time; but they were qualified [1381] trainee applicants.

Q. So all the white drivers that you hired were more qualified than all the black applicants, is that what you are stating? A. I did not receive one that had qualified.

Q. Okay. A. I'm sure there could have been some trainees, but we didn't have any driver-trainer.

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[1680] • • •

B. C. Rice, having testified, recalled for continued:

Direct Examination by Mr. Pate:

Q. You are Mr. B. C. Rice? A. Yes, sir.

Q. I believe you identified yourself before? A. That is correct.

Q. And hiring of road drivers is generally under your supervision; is that right? A. That's correct.

Q. Now, will you tell us what qualifications an applicant has to meet to be hired as a road driver? A. He has to be age twenty-five.

Q. Age twenty-five? A. That is company regulation.

Q. Yes. A. He has to be able to pass a DOT physical. He [1681] cannot have a history of a back injury or operation. We don't hire if he presently has a hernia. We basically look for one or more years tractor-trailer driving, over-the-road experience, we expect a good or clean motor

Further Testimony of Dwight Rice

vehicle driving record which applies to his driver's license. We do not hire if he has had a driving under the influence within the previous five years. We are primarily looking for stable employees who are not job-jumpers. We prefer that the man live within two hours of the terminal he is domiciled to run out of.

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[1684] • • •

Q. Tractor-trailer, over-the-road experience for a year; is that required in all cases for road drivers? A. It is not absolute. That is what we are looking for, one or more years of tractor-trailer, over-the-road experience. I think we have previously testified that we do take trainees where one of our present experienced road drivers will agree to take the man on and teach him the operation and how to drive.

Q. So, other than trainees, do you require the year in all instances? A. Well, not entirely. If he has had, I'd say, six months tractor-trailer experience, we feel that we would have a better chance of putting him with an older driver and getting the older driver's acceptance as far as taking him [1685] and further training him.

Q. If he does not come as a trainee, does he work with an older driver still, or not? A. Regardless of the years of experience he has had, he is put with an older driver for some period of time until we can get an evaluation of his ability and his ability to do the paper work we would—

Q. All right. How does he differ from the trainee, then?

A. Well, the trainee, basically, could have either no tractor-trailer experience. Of course, this would disqualify him from passing his road test, but he could have enough yard experience or city experience with an independent

company and that nature that would enable him to pass a road test. Of course, we also consider people that have graduated from the driver training schools that are commercial schools, as well as state supported schools due to the shortage of training they have had as far as operating the vehicle is concerned. We would consider them a trainee and again wouldn't employ them unless one of the older drivers agreed to give him further training.

Q. Well, after they get on the job, what is the difference in the way they operate? A. Basically, there is no difference. It's a double operation.

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[1774] • • •

JOSEPH D. WOODS called as a witness by the defendant after having first been duly sworn testified as follows:

Direct Examination by Mr. Pate:

Q. Give us your name. A. Joseph D. Woods.

Q. Where do you live, Mr. Woods? A. Birmingham, Alabama.

Q. Where are you employed? A. Bowmans Transportation.

Q. How long have you been connected with Bowmans? A. Since January of 1969.

Q. What is your present position? A. Safety Supervisor.

Q. Is that the same one you have had all the time? A. Yes, sir.

Q. Where are you located? A. Birmingham.

Q. Do you have something to do with the hiring of road drivers? [1775] A. Yes, I do.

Q. And what do you have to do with that? A. Well, I accept the applications and check the applications out through my office and make the decision whether to hire the man or reject him.

Q. And for what part of the operation is that? A. That's for the Birmingham Terminal, the Western part of our operation.

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[1790] • • •

Cross Examination by Mrs. Rindskopf:

Q. Mr. Woods, let me review some of your testimony. How long have you been the person chiefly in charge of hiring road drivers in Birmingham? A. Since January of '69.

Q. Since January of '69. And during that time you have been the person primarily responsible for hiring road drivers and firing them as well? A. Yes, ma'am.

Q. Do you have charge also of reviewing their performance on the job? A. Yes, ma'am.

Q. That is in your authority as well? A. Yes, ma'am.

Q. Approximately how many drivers do you hire a year, [1791] of course we are referring to your experience of '69, '70 and '71? A. I haven't made any studies in that, I couldn't give you even a close estimate.

Q. At the present time you have 115 drivers employed? A. Yes, ma'am.

Q. Would you say that your turnover is approximately 50% a year? A. I'd say it would be close.

Q. So we will estimate that you hire anywhere from 50 drivers up a year, would that be right? A. Yes, ma'am.

Testimony of Joe Woods
Testimony of Herman Adkins

Q. Okay, now, I gather from your testimony as well that it is not an easy job to keep your drivers up to a full compliment, is that right? A. No, ma'am it's not.

Q. On occasion, as a matter of fact, you have to dip into a group of people that are not as qualified as you like, who have perhaps less than a year's drivers experience, is that right? A. Our policy has been all the time to hire trainees.

Q. And that is because you simpy can't find sufficient qualified people, is that right? A. Yes, ma'am.

Q. Now, I believe you also stated that at the present [1792] time you have 14 black drivers? A. I think that is correct.

Q. Okay. When was the first black driver hired? A. It was either August or September of 1970.

Q. Do you remember the exact date? A. No, ma'am, I don't.

Q. Would you agree that it was—

The Court: September 11, '70.

By Mrs. Rindskopf:

Q. September 11, '70.

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[1859] • • •

Herman Adkins called as a witness by the defendant Union after having first been duly sworn testified as follows:

Direct Examination by Mr. Hocutt:

Q. For the record, would you state your full name, please, sir? A. Herman Bruce Adkins.

Testimony of Herman Adkins

Q. Where do you live Mr. Adkins? A. 6022 Woodview Drive, Morrow, Georgia.

Q. How old are you? A. 53.

Q. What is your occupation, Mr. Adkins? [1860] A. Labor Representative.

Q. Did you have a position with the International Union of District 50, defendant in this case? A. I do.

Q. What is that position, please sir? A. I have a dual position, I am International Executive Board Member, and I am also Regional Director of Region 26 in Atlanta, Georgia.

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[1862] Q. I won't bother to go into that at this time. Mr. Adkins from 1960 to 1967 did the International or Local represent Bowman employees in any way? A. No, sir. We had an election, we didn't represent them by contract, but we was authorized to petition the National Labor Relations Board in 1963. We petitioned and lost an election. We had a continuous campaign from that time until we did get enough members to agree with us and prevailed on the company to recognize us through a certification by the County Ordinary of Clayton County, Georgia.

Q. All right, sir, then in 1967 you were successful in organizing the company, is that right? A. Yes.

Q. And you are recognized by Bowman as the bargaining agent for the Bowman employees? A. Yes, sir.

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[1864] • • •

Q. All right, sir. Now, when did Bowman and the union begin negotiations leading to the 1967 Collective Bargaining Agreement? A. I believe it was in July. We reached an agreement on July 29, 1967.

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Testimony of Herman Adkins

[1865] • • •

Q. I understand. Mr. Adkins, with respect to the interdepartmental transfer and seniority, I'd like for you to tell the Court the Union's position on that and what did it bargain for? A. Well, it has long been the policy of our Union that company wide seniority is the only true seniority there is; and if you take away from it you have taken away from the oldest person. We proposed company wide seniority. During the negotiations we modified our demands on several occasions and wound up with what finally was in the contract.

Q. All right, sir, and that was not company wide seniority? A. No, it was not.

Q. Now, could you explain to the Court why the Union acceded to a departmental seniority which eventually was recorded in the contract? A. Well, at the time we negotiated our contract, first and also the last, and what we term strength, we did not have strength to strike this company and force the type of seniority or other conditions that we really wanted. This company had been through a strike of three or four or five years and it had a lot of labor trouble and the people that we represented were very skeptical of using our economic strength, so we [1866] bargained and bargained hard, got what we could and we polled the membership of the committee, which at that time was 26 or 27, to see if we could strike the system and be effective and force a better arrangement.

We only had two terminals as I remember and I'd rather not call those, that said they could strike. The rest of the 24 terminals at that time said no.

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Testimony of Herman Adkins

[1867] • • •

Q. All right. Now, would you state whether or not the question of interdepartmental transfer and seniority was in fact included in the reopened negotiations in 1968? A. It was.

Q. What did you bargain for at that time? A. Well, we wanted broader seniority, namely we were interested in seniority being system wide; but we bargained for anything that we could get better than what we had, close to that company wide seniority.

Q. All right, sir. Do you recall whether you made any progress along these lines or not? A. We only made progress in the area of posting bids which relates to seniority, and that was that the time of the working hours would be posted along with the bids.

Q. But again you were not successful in obtaining interdepartmental transfer? A. That's true and this reopener, by the way, was without the right to strike.

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[1873] • • •

Q. With respect to that particular point, Mr. Adkins, based on your knowledge of union membership, can you state whether a majority of union are in favor of, or opposed to company wide seniority? A. We would take at this operation today, I would say the membership would ratify two-to-one company seniority.

Q. All right, sir, one final question. Does the union have anything to do whatsoever with the hiring process? A. None.

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Plaintiffs' Exhibit 1

[557] [Partial]

AGREEMENT

This Agreement made and entered into by and between Bowman Transportation, Incorporated (herein called the Company), and International Union of District 50, United Mine Workers of America (herein called the Union), on behalf of its Local Union 13600, this 29th day of July, 1967.

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[558] • • •

ARTICLE IV

Seniority

1. Seniority shall be departmental in nature, and each employee's seniority shall be based upon his length of service in his department.

2. For the purpose of this article the departments shall be as follows:

(1) Over-the-road drivers.

(2) City pick-up and delivery drivers and dock workers, such employees at each terminal to constitute a separate department.

(3) Atlanta shop employees.

(4) Gadsden shop employees.

3. A new employee, while working under the terms and conditions of this Agreement, shall have no seniority status for the first forty-five (45) days of employment, and if [559] his services are terminated during this probationary period he will have no recourse to the grievance procedure. However, if he is retained for more than forty-five (45) days, his seniority shall run from his date of hire.

4. An employee shall lose his seniority upon the termination of his employment.

Plaintiffs' Exhibit 1

5. In the lay-off and recall of employees, the governing factor will be seniority subject to the qualifications and ability of an employee to do the available work.

6. In the assignment of dock workers to shifts, the Company shall consider seniority along with the needs of the business and the relative experience and ability of employees.

7. Job vacancies will be posted for a period of three work days for bidding by employees of the department in which the vacancy exists. Vacancies on regular runs of over-the-road drivers will be posted for two weeks. The Company will award the job or run to the bidding employee with the greatest seniority who is qualified for the job. The Company will furnish the Union a copy of the posted notice calling for bids. If the Company determines that none of the applicants have the necessary qualifications for the job, it may assign another employee to fill the vacancy or hire a new employee to fill it.

8. The Company shall post and maintain at each terminal and shop, a seniority list of employees in the unit at such terminal or shop. The seniority list for over-the-road drivers shall be posted and maintained in the Atlanta terminal.

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ARTICLE VI

Vacations

1. Employees will receive vacations with pay, based upon their years of continuous service with the company as follows:

Years of Service	*Weeks of Vacation*
1	1
3	2
10	3

Plaintiffs' Exhibit 1

[570] [Partial]

AGREEMENT

THIS AGREEMENT made and entered into by and between BOWMAN TRANSPORTATION, INC. (herein called the Company), and INTERNATIONAL UNION OF DISTRICT 50, ALLIED & TECHNICAL WORKERS OF THE UNITED STATES & CANADA (herein called the Union), on behalf of its Local Union 13600, this 6th day of August, 1970.

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[571] • • •

ARTICLE IV

Seniority

1. Seniority shall be departmental in nature, and each employee's seniority shall be based upon his length of service in his department.

2. For the purposes of this article the departments shall be as follows:

(1) Over-the-road drivers.

(2) City pickup and delivery drivers and dock workers.

(3) Shop employees.

Employees in departmental categories (2) and (3) shall constitute a separate department at each terminal.

[572] 3. A new employee shall have no seniority status for the first forty-five (45) calendar days of employment, and if his employment is terminated during this probationary period he will have no recourse to the grievance pro-

Plaintiffs' Exhibit 1

cedure. If he is retained for more than 45 calendar days, his seniority shall run from his date of hire.

4. An employee shall lose his seniority upon the termination of his employment. If an employee moves from a job within the unit covered by this Agreement to a job with the Company outside this unit, he shall not accumulate seniority during his employment outside the unit. For a period of ninety (90) calendar days after such employee's promotion or transfer to a job outside the unit, he shall retain his seniority and may elect to return, or the Company in its discretion may return him, to his former job within the unit. If the employee continues in employment outside the unit for a period in excess of 90 calendar days, he shall lose his seniority.

5. In the layoff and recall of employees, the governing factor will be seniority subject to the qualifications and ability of an employee to do the available work.

6. In the assignment of dock workers to shifts, the Company shall consider seniority along with the needs of the business and the relative experience and ability of employees. When a vacancy for a city driver, dock worker, or shop worker's job is posted for bidding in accordance with Section 7 of this article, the posted notice will show the hours of shift in addition to the job for which bids are requested.

7. Job vacancies will be posted for a period of three work days for bidding by employees of the department in which the vacancy exists. Vacancies on regular runs of over-the-road drivers will be posted for two weeks in Atlanta, Charlotte and Gadsden. The Company will award the job or run to the bidding employee with the greatest

Plaintiffs' Exhibit 1

seniority who is qualified for the job. The Company will furnish the Union a copy of the posted notice calling for bids. If there are no eligible applicants, or if the Company determines that none of the applicants have the necessary qualifications for the job, it may assign another employee to fill the vacancy or hire a new employee to fill it.

8. The Company shall post and maintain at each terminal and shop, a seniority list of employees in the unit at such terminal or shop. The seniority list for over-the-road drivers shall be posted and maintained in the Atlanta, Charlotte and Gadsden terminals.

[573] 9. All regular runs shall be posted for bidding on or before June 1 of each year. Any regular run filled by a new employee in accordance with Section 7 of this article, will not be included in any such annual posting occurring within six months after the job is so filled, but will be included in the second annual posting of regular runs occurring after the run is thus filled by a new employee. Vacancies in regular runs shall be posted for bidding when they occur.

10. All city drivers', dock workers', and shop workers' jobs will be posted in accordance with Sections 6 and 7 of this article within 30 days after the effective date of this Agreement, and shall be posted thereafter at intervals of approximately one year.

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Plaintiffs' Exhibit 1

ARTICLE VI

Vacations

1. Employees will receive vacations with pay, based upon their years of continuous service with the company as follows: [574]

Years of Service	*Weeks of Vacation*
1	1
3	2
10	3

Plaintiffs' Exhibit 2

[Partial]

(See Opposite) ☞

TABLE IV A

Over-The-Road Driver Annual Hiring

(All Terminals)

1965		1966		1967		1968		1969		1970		1971	
Blacks	Whites	Blacks	Whites	Blacks	Whites	Blacks	Whites	Blacks	Whites	Blacks	Whites	Blacks	Whites
0	31	0	48	0	33	0	74	0	138	10*	149	13*	88

Source: With the exception of the figures for Blacks in 1970 and 1971, these figures were culled from Company Seniority lists dated July 20, 1970 and May 1, 1971. Thus, only those employees still employed on the seniority list's preparation date are included.

* The Figures for Black hirees in 1970 and 1971 are derived from Answers to Plaintiff's Third Interrogatories, Answer #1 (Appendix)

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TABLE V A

Black Over-The-Road Driver Applications
(by Terminal)

	1970		1971		1972		TOTAL		
	Hired	Not Hired	Hired	Not Hired	Hired	Not Hired	Applications	Hired	Not Hired
Atlanta	0	25	2	99	2	6	134	4	130
Birmingham	10	26	8	51	0	4	99	18	81
Charlotte	0	1	0	3	1	0	5	1	4
Richmond	0	0	3	1	1	0	5	4	1
TOTAL*	10	52	13	154	4	10	143	27	216

* In addition to the Totals shown, there were five (5) Black applicants rejected by the Atlanta Terminal for which no application date was shown, and five Black applicants who were asked to report, but did not do so. Fifteen (15) additional Black applicants were awaiting disposition? (Atlanta: 4; Birmingham: 8; Charlotte: 3).

Source: Answers to Plaintiff's Third Interrogatories, Answer #1 (Appendix)

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TABLE V B

Black Over-the-Road Driver Applications
(By Terminal and Experience)

Date of Application:	1970						1971					
Disposition:	Hire			Not Hire			Hire			Not Hire		
Experience:	claim ≤ 1yr.	claim ≥ 1yr. (not verified)	verify ≥ 1 yr.	claim ≤ 1yr.	claim ≥ 1yr. (not verified)	verify ≥ 1 yr.	claim ≤ 1yr.	claim ≥ 1yr. (not verified)	verify ≥ 1 yr.	claim ≤ 1yr.	claim ≥ 1yr. (not verified)	verify ≥ 1 yr.
Atlanta	0	0	0	11	9	5	0	0	2	42	43	14
Birmingham	2	0	8	7	9	10	2	0	6	18	22	11
Charlotte	0	0	0	1	0	0	0	0	0	0	3	0
Richmond	0	0	0	0	0	0	0	0	3	0	1	0

Source: Answers to Plaintiff's Third Interrogatories, Answer #1, Apperdix; See Table V A supra.

[CONTINUED ON FOLLOWING PAGE]

TABLE V B (continued)

Black Over-the-Road Driver Applications
(by Terminal and Experience)

Date of Application:	1972					
	HIRE			NOT HIRE		
Disposition:	claim	claim	verify	claim	claim	verify
Experience:	≤1 yr.	>1 yr. (not verified)	≥1 yr.	≤1 yr.	>1 yr. (not verified)	≥1 yr.
Terminal						
Atlanta	0	0	2	5	1	0
Birmingham	0	0	0	3	1	0
Charlotte	0	0	1	0	0	0
Richmond	0	0	1	0	0	0

Source: Answers to Plaintiff's Third Interrogatories, Answer # 1, Appendix. See Table V A supra.